IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8523 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BABUBHAI M RATHOD

Versus

VALMIK H PATEL

Appearance:

MR SURESH M SHAH for Petitioner

MS KJ BRAHMBHATT for Respondent No. 1

MR VM PANCHOLI, AGP, for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 28/04/2000

ORAL JUDGEMENT

1. After completion of arguments and passing of the order allowing the petition, Ms. K.J. Brahmbhatt appeared and on request she was heard and the court is satisfied that the order passed needs not to be modified.

2. The electricity is not a luxury or a thing only to be enjoyed by rich persons. It is a bare necessity of life. So long as the person continues in the occupation of the premises in dispute leaving apart what is his right, title and interest in the premises qua the person against whom he is filing the litigation, I fail to see in case he is allowed to enjoy this benefit what loss to the other side will result. Here, in this case, the petitioner claims the tenancy rights in the suit premises whereas the private respondents are not accepting the same. It is a dispute in between the petitioner and the respondent No.1 of status of the petitioner in the suit premises and that is not relevant and material for the enjoyment of this bare necessity of life. It is an admitted fact of the respondent No.1 that the petitioner continues in occupation of the premises in dispute. Leaving apart whether the respondent No.2 has power under section 23-A of the Bombay Rent Act to grant permission to the petitioner to have electricity connection in the suit premises and the effect of the judgment given by the civil court on application of the petitioner under section 24 of the Act so long as he continues in occupation of the premises he cannot be denied of this amenity, facility and bare necessity of life. I fail to see how any right will be created in the premises of the petitioner to grant him permission to have a separate electricity connection. For all these years, it is unfortunate that the petitioner is not having the electricity facility available in the premises. It is a fact which is not in dispute that the petitioner was enjoying the electricity facility but later on the respondent No.1 has adopted the means and as a result of which it stood discontinued. This act of the respondent No.1 deserves to be deprecated. This cannot be made a mode or a tool in the hands of the respondent No.1 to make the life of the petitioner miserable and difficult. This is unfair, unreasonable and against the basic principles of natural justice and fairplay. It is indirectly an attempt to dispossess the petitioner without due process of law. The petitioner is in occupation of the premises, may not be as a tenant or as a licensee or even if it is taken that he is a trespasser how far it is justified by the respondent No.1 so long as he continues in possession to disconnect the electricity facility which he was enjoying. When he approached to the civil court, there the respondent No.1 has objected his application filed under section 24 of the Bombay Rent Control Act. That application as what Ms. Brahmbhatt states has been rejected on the ground that the petitioner failed to establish the relationship of landlord and tenant in between himself and the respondent

No.1. So far as the application under section 23-A of the Act is concerned that has also been opposed and that opposition has been accepted and the application came to be rejected.

3. Ms. K.J. Brahmbhatt appearing for the respondent No.1 apprehends that in case this facility is extended to the petitioner, then it will create tenancy right of his in the suit premises. This apprehension is wholly illusory and misplaced. By permitting electricity connection to the petitioner in the suit premises, it is to be stated at the cost of repetition it will not create any rights whatsoever other than what right the petitioner has therein. I find sufficient merits in the contention of Ms. K.J. Brahmbhatt that the petitioner may be given separate connection in the premises and not to restore the earlier facility which he was enjoying of the electricity from the respondent No.1.

4. In the result, this special civil application succeeds and the same is allowed and it is hereby declared that the petitioner being in occupation of the suit premises and so long as he is not dispossessed therefrom by due process of law, he is entitled to enjoy the benefit of bare necessity of life "electricity". The petitioner is free to apply before the appropriate authority for giving him the electric connection in his name in the suit premises and in case such an application is filed, the authority concerned may not reject this application only on the ground that no objection certificate has not been given by the owner of the suit premises i.e. the respondent No.1. In case such an application is filed, it is expected of the authority concerned to finally decide it within a period of 15 days of filing thereof and thereafter to provide electricity to the petitioner at the premises within 15 days next. In case that application cannot be granted or the electricity connection cannot be given to the petitioner, the authority concerned shall pass a reasoned order and copy of the same may be sent to the petitioner by registered post A.D.. In case of difficulty, liberty is granted to the petitioner for revival of this special civil application. Rule is made absolute accordingly with no order as to costs.

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